

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 575 of 1983

Date of decision: 19-6-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARSHRATKHAN ANVERKHAN PATHAN & OTHERS

Versus

NURJEHAN W/O.AHMEDMIYAN RASULMIYAN SHAIKH

Appearance:

MR RAJNI H MEHTA for Petitioners

MR BG JANI for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/06/98

ORAL JUDGEMENT

This first appeal has arisen from

M.A.C.T.Application No.129 of 1981 decided on 31-12-1982 by the Motor Accident Claims Tribunal (Main), Ahmedabad (Rural). Under the impugned award Rs.76,500/- was awarded towards compensation to the dependents of deceased Ahmedmiyan Rasulmiyan who died in the vehicular accident on 10th October, 1980. The facts of the case are that on 10-10-1980 at about 8.30 to 9.00 a.m. deceased Ahmedmiyan Rasulmiyan was proceeding on his cycle on Isanpur Chandola Road from Isanpur side to Chandola side. At that time, bus No.GTA 8347 belonging to Amedabad Municipal Transport Service was arriving from opposite side on its way from Isanpur to Lal Darwaja. The bus dashed against the cyclist, knocking him down, as a result of which he received serious injuries and succumbed to the same at L.G. Hospital on the same day.

2. The respondents-claimants filed claim application before the Motor Accident Claims Tribunal, Ahmedabad (Rural) and claimed Rs.90,000/- as compensation under different heads. The appellants herein contested the claim application both on the ground of contributory negligence as well as quantum of amount of compensation claimed. The appellants have come up with the case that the deceased himself was negligent in this case to the extent of 50%. On quantum of compensation the case of the appellants was that the income which was stated to have been earned by the deceased has not been established. The learned Tribunal in its judgment and award has taken the contributory negligence of the deceased at 10% and accordingly out of the total amount of compensation awarded to the claimants, 10 % has been deducted. For the purpose of calculation of compensation, income of the deceased was taken at Rs.450 per month. Dependency benefit was taken to be Rs.370 per moth. Applying the multiplier of 18, Rs.79,920/- was awarded towards compensation. For loss of expectancy of life the Tribunal awarded Rs.5,000/-. Thus, out of the total compensation of Rs.85,000/- 10% was deducted towards contributory negligence and as such net amount of Rs.76,500/- was awarded towards compensation. The Tribunal further awarded interest on the amount of compensation at the rate of 6% per annum and proportionate cost. Hence this appeal before this court.

3. Learned counsel for the appellants, so far as the amount of compensation is concerned, has not challenged the same. He raised only one contention that looking to the facts of the case the Tribunal has committed serious illegality in determining the negligence of the deceased only of 10%. According to him, negligence of the deceased should have been taken to the extent of 50%%.

On the other hand the counsel for the respondents contended that after taking into consideration the evidence of both the parties the Tribunal has reached to just and reasonable conclusion that the contributory negligence of the deceased was 10%, and it is a finding of fact in which this court may not interfere.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Deceased Ahmedmiyan Rasulmiyan was proceeding on rather narrow road of 11 feet wide from the north to south. He wanted to cross the road from the left side to his right side. At that point of time the bus was proceeding from south towards the north. It is clearly borne out from the record of the case that the bus had marks on its left front side, which means that the deceased had gone some width of the road from the east to the west. From the side of the claimants one Sumatilal Vadilal (Exh.13), rikshaw driver, was examined. From the statement of Sumatilal Vadilal it is clear that before the deceased Ahmedmiyan decided to cross the road he had given hand signal to the bus driver. It has also come in the statement of Sumatilal Vadilal that Ahmedmiyan was seen by the bus driver. This statement of the witness has been relied upon by the Tribunal. I do not find anything wrong in the judgment of the Tribunal to the extent where it placed reliance on this statement. In the facts of the case the driver of the bus who was in charge of the heavy vehicle had to show more than normal care, particularly where the road at the place was rather narrow, and the approach road leading to the village joins this road. In the facts which have been stated by the Tribunal, I have my own reservation whether even 10% contributory negligence could have been attributed to the deceased Ahmedmiyan. Still the Tribunal found the deceased negligent to the extent of 10% on the ground that it was rather hasty on his part to take turn of the cycle without bothering to find out whether he had caught the eye of the bus driver. However, the claimants have not challenged that part of the award. In the facts and circumstances of the case where the cyclist had given hand signal before taking turn to cross the road, and further fact that the driver of the bus had sufficient time to take care to stop his vehicle, negligence of the cyclist cannot be taken to the extent to 50% in the present case. The cyclist had taken care and caution before he decided to turn to cross the road. It was only expected of him to give some signal while turning to the right, which he did. Negligence of the deceased which has been taken at 10% also seems to be rather on the higher side in the facts and circumstances of the case.

I do not find any merit in the appeal.

5. In the result the appeal fails and the same is dismissed. No order as to costs.

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